

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

JUL 27 2020

JAMES W. McCORMACK, CLERK

By: *John K. ...* **DEP. CLERK**

**CONNIE BROSMORE, as Special Administratrix
of the Estate of Tim Brosmore, deceased,
and as spouse,**

Plaintiff,

vs.

No. 3:20-cv-00215 BSM
JURY DEMANDED

**DEERE & COMPANY A/K/A JOHN
DEERE COMPANY,**

Defendant.

This case assigned to District Judge MILLER
and to Magistrate Judge VOLPE

COMPLAINT

Comes the Plaintiff, Connie Brosmore, as Special Administratrix of the Estate of Tim Brosmore, deceased, and as spouse, by her attorneys, Mark Ledbetter and Scott Emerson, and for her Complaint against Defendant, Deere & Company a/k/a John Deere Company, states:

PARTIES

1. Plaintiff, Connie Brosmore, as Special Administratrix of the Estate of Tim Brosmore, deceased, and as spouse of the decedent, resides at 2867 CR 323, Bono, AR, Craighead County, 72415; Defendant, Deere & Co. a/k/a John Deere Company [hereafter, "Deere"], is a non-resident corporation, domiciled in Moline, Illinois, which does business in Arkansas, and has caused a tortious injury in Craighead County, Arkansas; Defendant may be served upon its registered agent for service of process, CT Corporation System, 124 West

Capitol Avenue, Suite 1900, Little Rock, AR 72201; for the purpose of this suit, Defendant is a manufacturer and product supplier under A.C.A. § 16-116-201, *et seq.* [Arkansas Product Liability Act of 1979] of a Model 757 [“the product”], a 1214 pound, ZTrak riding mower; that Plaintiff, decedent, Tim Brosmore, sustained a fatal injury in the use of said mower manufactured by Deere.

JURISDICTION

2. This Court has jurisdiction of the subject matter and the parties to this cause under 28 U.S.C. §1332, *et seq.*; Defendant transacted and continues to transact business in Arkansas, and is amenable to process under the Arkansas Long Arm Statute A.C.A. § 16-4-101, *et seq.*, for having caused an injury in this state; that there is diversity of citizenship jurisdiction under 28 U.S.C. § 1332 in this matter, as the parties are citizens of different or diverse states, and the amount in controversy, exclusive of interest and costs, exceeds the minimum jurisdictional amount of \$75,000.00; venue is proper in this court, as the accident arose in Craighead County, Arkansas, in the Eastern District of Arkansas.

ACCIDENT

3. That on the 29th day of July, 2017, at or before 9:11 p.m., Plaintiff’s decedent, Tim Brosmore, a healthy, active and industrious man, then 61 years of age and employed by Parker Hannifin, Jonesboro, Arkansas, sustained a fatal injury, while operating a Model 757 Deere ZTrak mower [the “product”], manufactured by Defendant, Deere & Co., Inc. The said Deere Model 757 [c. 2005] mower was used when purchased, and owned by decedent at the time of his fatal accident. The serial number for the mower was TC0757A040794. The subject accident occurred at 3301 CR 323 in Bono, Arkansas 72416; the accidental injury and wrongful

death were due to said mower's defective and unreasonably dangerous condition, and Defendant's common law negligence [see "Claims," *infra*]; that, as a result of the said defects, negligence, *etc.*, Plaintiff's decedent sustained a fatal injury, in a tipover of the mower, crushing Plaintiff's decedent. Plaintiff's losses for which this claim is made include pain and suffering, suffocation, mental anguish, loss of pleasure or enjoyment of life, any medical, burial and funeral cost, and lost earnings of \$30,000.00, per year in support of his wife, her loss of consortium, and losses of advice, comfort and companionship sustained by his children, Cody Brosmore, Amie (Brosmore) Perkins and Jennifer Brosmore.

CLAIMS

4. At all times pertinent hereto, Defendant was the manufacturer and supplier of the Model 757 ZTrack riding mower [product], serial number TC0757A040794. The Model 757 was sold by an individual who was having the mower serviced at Defendant's dealer, Greenway Equipment in Jonesboro, AR, to Cody Brosmore, the decedent's son, who was then a Greenway employee, who re-sold the Model 757 to Plaintiff's decedent prior to the accident. Said product (mower) was in a defective and unreasonably dangerous condition under A.C.A. § 16-116-201, at all times pertinent hereto; that Defendant was also negligent, as it knew or should have known for many years that a hazardous condition involving its Model 757, and similar tractor/mowers, existed at the time of its manufacture, or that such a hazardous condition could arise out of and during its normal or foreseeable operation and use. At the time of the accident, July 29, 2017, despite the presence of a retracted ROPS [roll over protection structure], said ZTrak mower was defective and unreasonably dangerous as it lacked (a) adequate warnings as to how, when and where to properly operate the mower on sloped terrain; (b) proper instructions for operator on-site determination of what constituted an unsafe slope; and (c) lack of a safety inclinometer

device, sensor or shut-off switch to prevent such tip overs. Plaintiff's decedent likewise received no notice from Defendant of the said mower's defects prior to his fatal accident. The Model 757 failed to perform in the manner intended, and failed to perform in a manner consistent with the expectation of an ordinary consumer or operator expected to operate the said mower under the circumstances.

INJURIES AND DAMAGES

5. The Plaintiff seeks compensation herein for the following elements of damage proximately caused by the fault of Defendant, viz.:

(a) Ambulance, medical, funeral and burial expenses, believed to be in excess of \$5,000.00 incurred by Tim Brosmore;

(b) Bodily injury and wrongful death under A.C.A. § 16-62-102, *et seq.*;

(c) Conscious pain and suffering;

(e) Emotional distress and mental anguish;

(f) Loss of enjoyment of life;

(g) Lost earnings and support of Plaintiff's decedent of \$30,000.00 per year since July 29, 2017;

(h) Loss of Plaintiff's decedent's future earnings and support for the remainder of his work-life expectancy; and

(i) Loss of consortium, companionship, support, and affection of Plaintiff's survivors, Connie Brosmore, Cody Brosmore, Amie Perkins and Jennifer Brosmore.

6. That, by reason of the Defendant's sale or supply of a defective and unreasonably dangerous product and negligence, Defendant is liable for the aforementioned and proximately

caused damages sustained by Plaintiff's decedent, Tim Brosmore, and claimed herein by Plaintiff, Connie Brosmore, on her behalf, and on behalf of any beneficiary(ies).

WHEREFORE, Plaintiff respectfully prays judgment against Defendant for compensatory damages in the sum of \$1,000,000.00 for the Plaintiff's personal injuries from wrongful death under A.C.A. § 16-62-102, *et seq.* and other compensatory damages; for punitive damages, Plaintiff seeks \$2,000,000.00 due to Defendant's willful and wanton disregard for the life and safety of Plaintiff's decedent and others similarly situated. Defendant's Model 757 ZTrak mower posed an unknown severe tip-over risk or hazard to mower operators like Tim Brosmore, which was known to Defendant, based upon Defendant's prior tractor/mower designs, promotional consumer videos conducted on steep slopes, and shown online, Deere's own statistics and engineering articles pertaining to roll-over hazards, operator fatalities, and Defendant's prior agricultural product litigation involving tractor roll-overs; a trial by jury is hereby demanded, and such costs and post-judgment interest as may be allowed by the Court.

Respectfully submitted,

/s/ Mark Ledbetter

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